



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2403290
Applicant Name: Mark Nelson
Address of Proposal: 823 West Garfield Street

SUMMARY OF PROPOSED ACTION

Master Use Permit for future construction of a 57 sq. ft. dormer addition and 10.5 sq. ft. bay window to an existing single family residence.

The following approvals are required:

Variance – to allow expansion of a nonconforming structure (Existing: 0 sq. ft. Proposed 28.5 sq. ft. - SMC 23.42.106).

Variance – to allow portions of the principal structure to extend into required rear yard (Required: 16' Proposed: 13' and 12' - SMC 23.44.014.B).

SEPA DETERMINATION: Exempt DNS EIS

DNS with conditions

DNS involving non-exempt grading or demolition
or involving another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The 4,800 square foot (sq. ft.) site is located in a Single Family 5000 (SF 5000) zone at the southeast corner of the intersection of 9th Avenue West and West Garfield Street. The existing lot is rectangular in shape measuring 60' in width and 80' in depth and is oriented west to east. The subject property

contains a 1½ story single family residence with a daylight basement and a one car terraced garage fronting on 9th Avenue West. The existing house with Tudor architecture was built in 1925, prior to the adoption of the City of Seattle's present zoning laws regulating rear yard setback. The house is setback 9' from the north property line, 14.5' from the east property line, 7.17' from the south property line and 30.5' from the west property line.

The portion of West Garfield Street that fronts on the subject property includes an 8' wide stairway making it a non-through street. The remain 36' of the West Garfield right of way area has been developed with lawn, an iron fence, two concrete retaining walls a path and walkway leading up to the portion of an elevated West Garfield Street cul-de-sac. The western property line is defined by a tall wooden fence with a gate midway up the stairs for pedestrian access onto the site. Pedestrian access is also available from the cul-de-sac at the northeastern corner of the West Garfield right of way area. Vehicular access is provided directly from 9th Avenue West to the existing terrace garage. 9th Avenue West is a divided north/south street and a concrete retaining wall separates the property from the street.

The site is identified as Environmentally Critical Area (ECA) Steep Slope-mainly along the eastern and western areas. The site slopes abruptly upwards within the first 22' from 9th Avenue West, levels out where the footprint of the structure resides and again slopes abruptly upwards 12' from the rear property line.

A variance was granted for this site August 6, 1997. DPD issued a Master Use Permit (#693573) to the current owner to "Establish use for future construction of a 910 sq. ft. second story addition to an existing single family residence; Project includes future construction of a two-car detached garage and approximately 163 cubic yards". The owner allowed the Master Use Permit to expire prior to applying for a construction permit. In comparison, the scope of work requested under the previously granted variance has been decreased under the current variance proposal. However, the new proposal encroaches further into the required rear yard area.

The residences in the neighborhood are predominantly one to two-story homes. The surrounding zoning is primarily Single Family 5000 (SF 5000) with predominantly single family residential developments in the vicinity.

Proposal Description

The applicant is seeking a variance for future construction of a first story bay window addition approximately 12.75 sq. ft. to enlarge an existing music room and a second story cantilevered bedroom dormer addition to portions of the building's east façade in the rear yard. The proposed bedroom dormer addition built into the existing structure's roof attic area will span 21.5' in length (including attic area) and create approximately 57 sq. ft. of interior space with a depth of 4' within the 16' rear yard setback.

The entire east façade of the house is existing and nonconforming to current rear yard requirements, i.e. sixteen feet (16') per SMC 23.44.014 B. The applicant requests to construct a dormer addition above the existing structure's footprint (28.5 sq. ft.) and then be allowed to expand both the dormer addition and bay window addition further outward within that 16' rear yard (2' and 1.5' respectively). These proposed additions in the required rear yard area would be a gain of 67.5 sq. ft. of additional living

space. As shown on the submitted plan, the existing home extends 2' into the required rear yard and is nonconforming with regard to development standards. The proposal would increase that nonconformity.

Public Comment

Public notice of the proposed project ended on August 18, 2004. No comment letters were received during this period.

ANALYSIS - VARIANCES

As provided in SMC 23.40.020, variances from the provisions or requirements set forth in the Seattle Municipal Land Use code shall be authorized only when all of the following facts and conditions are found to exist:

1. *Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;*

The unusual conditions applicable to the subject property are the size, topography, location and its surroundings. The site's size is 4,800 sq. ft. which is smaller than the required 5,000 sq. ft. minimum site size in that zone. Existing sloping conditions previously mentioned in this decision places further restrictions as to where the homeowners can expand their existing structure. This corner lot is surrounded by 9th Avenue West, West Garfield Street which is a non-through street, and residential properties to the east and south. A concrete retaining wall along 9th Avenue West creates a barrier for pedestrian access from 9th Avenue West. In addition, there is no direct pedestrian access or vehicular access from West Garfield Street.

The owner of the lot is seeking to expand a legal nonconforming single family residence. The current location of the house is setback 14' from the rear property line instead of the 16' rear yard setback as required by the Land Use Code. The lot size and lot configuration of the subject property is a preexisting condition not created by the owner.

Due to the lot's size and existing structure orientation, a Land Use Code complying design would not allow any additional footprint along the east façade wall. Given these site constraints, the request for a variance to encroach into the sixteen foot rear yard setback 2' over existing building footprint is sensible. Because of the unusual conditions applicable to the subject property, including topography and location of the existing house, which are not created by the applicant, the strict application of the Land Use Code would deprive the property of the rights and privileges enjoyed by other property owners in the same zone or vicinity.

However, the existing topography, location and the subject properties surroundings does not limit the applicant the opportunity to enlarge the existing music room nor create a bedroom that meets minimum building code standards. The applicant provided a vicinity map of building footprints in the immediate

neighborhood with a legend indicating rear yard non-conformities. Some of the properties shown with building footprint near the rear property line abut alleys and therefore are allowed to utilize the centerline of the alley as the lot line for purposes of rear yard determination (SMC 23.44.014.B). The remaining properties, similar to the subject site's topography conditions and orientation on the lot, appear to possibly have existing building footprint in the required rear yard area. The applicant did not provide evidence that these property owners were allowed to add additional footprint beyond the non-conforming building footprint into their required rear yards. Therefore, strict application of the land use code would not deprive the property of the rights and privileges enjoyed by other property owners in the same zone or vicinity.

2. *The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;*

Certain facets of the requested variances would not go beyond the minimum necessary to afford relief. The owner wants to alter existing attic space in order to create an additional upper floor bedroom. The existing residence has a total of three bedrooms: one 135 sq. ft. bedroom located on the main floor; two upper floor bedrooms, 253 sq. ft. and 173 sq. ft. respectively. The upper floor bedrooms are irregularly shaped and have sloping ceilings which subtract from the habitable area of each room. Per Section R304 of the Seattle Residential Building Code, "Other habitable rooms shall have a floor area of not less than 70 square feet. Habitable rooms shall not be less than 7' in any horizontal dimension. Portions of a room with a sloping ceiling measuring less than 7' from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required habitable area for that room."

The existing residence is nonconforming with respect to the minimum rear yard requirement. A code conforming dormer addition would create an additional bedroom only 6'-4" deep. Allowing the dormer addition to be built above the existing footprint of which is located 2' within the rear yard would allow the owner a bedroom (roughly 8'-4"x 14'-3") that complies with current building code standards.

This improvement is minimal and does not go beyond what is necessary to afford relief. Most of the residences on the same block and in the vicinity have steep slope conditions but have the advantage of being located on larger parcels abutting alleys. Allowing the owners to remodel their existing house in a manner that has the least impact to the neighboring properties and maintains the original architectural design of the house would not constitute a grant of special privilege.

Conversely, allowing the homeowners to construct a 1'-6" x 8'-6" bay window addition and an additional 2' bedroom dormer extension within the required 16' rear yard area would go beyond the minimum necessary to afford relief. The existing music room is 10'x 9'-8". Habitable rooms (music room and bedrooms) area required to be a minimum dimension of 7'x 10'. Per previously approved plans, the owners have demonstrated that an expansion to create usable living space equal to the amount requested could be achieved within the principal building area and within the existing building footprint without this requested variance.

As proposed, the scale of the remodel is minimal in comparison to the originally proposed remodel granted under Permit #693573. However, allowing the owners the opportunity to construct these additions does go beyond what is necessary to afford relief (i.e. to extend further into the required yard) and would be a grant of special privilege.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located.*

The encroachment of a total of 4' into the required 16' rear yard does not present any material detriment to the abutting properties. The location of the house abuts the side yard of the neighboring lot and is separated by a combination of a fence, dense vegetation and trees. The new additions will be minimal and not out of character with the rest of the neighborhood. Therefore, the proposal would not likely be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties;*

Literal interpretation and strict application of the Land Use Code would prohibit the applicant to enlarge the existing bedroom which conforms to the required rear yard of 16' and meet minimum horizontal dimensions for habitable spaces. The upper dormer expansion over that portion of the building footprint into the required rear yard (2') would not be allowed without variance relief. Strict application of the requirements of the Land Use Code would result in not allowing the owners to alter an existing bedroom without significant alterations to in the overall Tudor design of the structure and possibly creating a structural design challenge. Therefore literal interpretation of the requirements of the Land Use Code would result in undue hardship to the applicant.

Additionally, the literal interpretation and strict application of the rear yard requirement would prohibit the bay window addition and that portion of the bedroom dormer that is proposed to extend 1.5' and 2' respectively beyond the existing building's footprint into the rear yard without a variance. However, literal interpretation and strict application of the Land Use Code would not restrict the opportunity to construct a main floor addition to the music room along the north façade. That portion of the building is approximately 10'-8" setback from the north property line. That addition, along with interior alterations, may achieve a similar design as to what is being requested under this proposal. The applicant has demonstrated via previously approved plans that an alternative code compliant design could be sought to create a larger bedroom within the existing structure's footprint. Therefore, the applicable requirement of the Land Use Code in this instance would not cause undue hardship or practical difficulties to the applicant if not granted.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code regulations for the area.*

The purpose of the Land Use Code is to protect and promote public health, safety, and general welfare through a set of regulations and procedures for the use of land which conforms to the City's land use policies. Procedures are established to increase citizen awareness of land use activities and their impacts and to coordinate necessary review processes. These provisions are designed to provide adequate light, air, access, and open space.

According to Seattle's Comprehensive Plan and the Land Use Code, single family structures in Single Family zones are permitted to remain, but not to expand so as to increase non-conformity, except as required by applicable laws. The proposed dormer addition and bay window addition would create a new non-conformity in the rear yard, which is not allowed by Code. Furthermore, previously permitted plans document that further expansion could be accommodated within the principal building area on the site without impacting the adjacent property to the east.

The spirit and purpose of the Land Use Code provides for the preservation of the character of single family neighborhoods and for housing opportunities. Conditionally granting the proposed second story dormer addition to expand above that portion of the building's non-conforming east façade would provide more usable living space and would be compatible with these policies and building codes. This proposal would be consistent with the spirit and purpose of the Land Use Code and policies.

DECISION-VARIANCE (based upon approved plans in the file)

Variance - to allow expansion of a nonconforming structure (Existing: 0 sq. ft. Proposed 28.5 sq. ft. - SMC 23.42.106) is **CONDITIONALLY GRANTED**.

Variance - to allow portions of the principal structure to extend into required rear yard (Required: 16' Proposed: 13' and 12' - SMC 23.44.014.B) is **CONDITIONALLY GRANTED**.

CONDITIONS -VARIANCE

Prior to issuance of the MUP, the applicant shall revise the official plans to reflect the following:

1. The owner is allowed to construct an upper floor bedroom dormer addition that spans 21.5' in length with interior space dimensioned as 14'-3" x 2' above that portion of existing structure footprint within the required rear yard area. Any portion of the proposed dormer addition that extends beyond the existing building footprint and is closer than 14' to the rear property line is not allowed.
2. The owner is not allowed to construct the proposed bay window addition along the east wall façade that would encroach an additional 2' into the required rear yard.

Signature: (signature on file) Date: February 10, 2005
Tamara Garrett, Land Use Planner

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